

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on January 12, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. Bill Glaser (R)
Sen. Alvin Ellis Jr. (R)
Sen. E. P. "Pete" Ekegren (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. Jon Ellingson (D)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Branch
Sandy Barnes, Committee Secretary

Note: **CHAIRMAN GERRY DEVLIN** passed the gavel to **SEN. GLASER** for the hearings.

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 84, 1/11/1999; SB 105,
1/11/1999
Executive Action: SB 25; SB 84

HEARING ON SB 84

Sponsor: **SENATOR MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **Gene Walborn, Department of Revenue**
Dan Whyte, Office of the Secretary of State

Opponents: **None**

Opening Statement by Sponsor:

SENATOR MIKE HALLIGAN, SD 34, Missoula, introduced **SB 84** as a cleanup bill which is designed to provide more efficiency in the tax administration process. Currently the Secretary of State, before a corporation is dissolved, requires that the corporation receive a tax clearance certificate from the Department of Revenue; however, the Department of Revenue requires a final tax return be filed before a corporation is dissolved, so there's confusion as to exactly when the dissolution will occur and when that tax clearance certificate can be issued. This bill makes it possible for a tax clearance certificate to be issued by the Department of Revenue indicating the taxes are paid up to that point. It does not relieve the corporation of responsibility in providing a final tax return once the corporation is dissolved.

Proponents' Testimony:

Gene Walborn, Department of Revenue, indicated that this is the Department's bill to help clarify the confusion involved in the dissolution of a corporation.

Dan Whyte, Chief Legal Counsel for Secretary of State Mike Cooney, agreed with **SEN. HALLIGAN'S** statement that this legislation will clarify the details of the corporation dissolution process both for the Secretary of State and for the dissolving corporation. This makes it possible for the corporation to have the required tax clearance certificate so that the dissolution can be accomplished.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. HALLIGAN had no closing statement.

HEARING ON SB 105

Sponsor: E. P. "PETE" EKEGREN, SD 44, CHOTEAU

Proponents: Dave Woodgerd, Department of Revenue

**Opponents: Mike Voeller, Lee Newspapers of Montana and Montana
Newspaper Association
Riley Johnson, Montana Broadcasters Association
Barbara Ranf, US West**

**Dennis Burr, Montana Taxpayers Association
Mike Strand, Montana Independent Telecommunication
Systems**

Opening Statement by Sponsor:

SEN. PETE EKEGREN, SD 44, Choteau, explained that **SB 105** is an act specifying the confidentiality of certain tax returns, reports, and records filed or prepared with respect to centrally assessed companies used to determine market values for property tax purposes. The proposed legislation will clarify whether certain information obtained during the course of an audit or appraisal of a centrally assessed company is confidential.

SEN. EKEGREN went on to say that currently the Department of Revenue treats all property tax records as public information. The only exception is realty transfer certificates. An issue has arisen wherein a centrally assessed company that was scheduled for audit by a team of auditors from the Multi-State Tax Commission, of which Montana is a member, refused to allow the audit because the company believed that information provided for the audit contained sensitive business information which should be confidential. The proposed legislation will clarify the confidential treatment of centrally assessed companies' property tax records and help to rectify this problem.

Proponents' Testimony:

Dave Woodgerd, Chief Legal Counsel, Department of Revenue, reiterated what **SEN. EKEGREN** had stated regarding the refusal of a centrally assessed company of an audit by the Multi-State Tax Commission because of what they considered proprietary information which could give their competitors an advantage should that information become available to them. The main purpose of this bill is to make it clear that under the Constitution that kind of information is in fact confidential. That has also been upheld by the District Court of Lewis and Clark County in Associated Press v. Department of Revenue, which held that certain information regarding coal company contracts held by the Department was in fact proprietary information and the Associated Press did not have a right to see that information under the Constitution.

Mr. Woodgerd mentioned that there was some concern that this legislation was not limited to proprietary information, and the Department will clarify this bill and make it clear that the only thing that will be confidential is proprietary information.

Opponents' Testimony:

Mike Voeller, Lee Newspapers of Montana and the Montana Newspaper Association, stated that he strongly objected to this legislation as written, but that the changes offered by the Department have resolved some of those objections. **Mr. Voeller** then went on to say that he continues to have concern with what proprietary information is and who determines what is proprietary. He recommended that a definition of proprietary be included in the legislation.

Riley Johnson, Montana Broadcasters Association, agreed with **Mr. Voeller's** concerns as to what is proprietary, citing the problems that arose over the bids for a private prison, and suggested that a definition of proprietary be included.

Barbara Ranf, US West, indicated that according to **SB 105**, confidentiality will be provided for information given to the Montana Department of Revenue in returns and reports used in taxation procedures. She said that on the surface that would be a good thing. She said the issue that causes concern is that this legislation would then allow Montana to participate in multi-state tax audits and proceedings for centrally assessed companies. **Ms. Ranf** stated that there are no guidelines in this legislation which specify how that participation will be handled. **US WEST** has these concerns regarding multi-state audits and proceedings: Whether all centrally assessed companies who have operations in other states will be treated the same, either all handled on a multi-state basis or not; whether companies have the option of either agreeing to participate in multi-state tax audits or, if they prefer, requesting audits on Montana taxes by the Montana Department of Revenue; whether companies who participate in multi-state tax audits will have some reassurance that other states participating will provide confidentiality provisions as well; and whether a company who doesn't agree with an audit can disagree with an individual state or whether it will be necessary to disagree with all states involved and challenge all states involved. She said that until these concerns are resolved, **US West** cannot support **SB 105**.

Dennis Burr, Montana Taxpayers Association, said that the committee probably needed more information on the Multi-State Tax Commission because it is intimately involved with this legislation. He said that the Multi-State Tax Commission was formed originally in the western states in the early '70s, and it was helpful to smaller states because they could combine efforts in auditing multi-state, multi-national corporations, generally in the area of income and corporate license tax.

Mr. Burr stated that the situation that causes concern is that in a multi-state tax audit that covers ten states on property taxes, each state's laws are different on how property is assessed. If the lead state files a lawsuit, the other states in that audit also file suit. If the original state loses, there are still nine other states with lawsuits pending, which has the potential of tying up companies in litigation whether or not there was any particular problem with that state's compliance with the tax laws.

Mr. Burr said he does not particularly like the Multi-State Tax Commission and Montana's participation in it, particularly in the area of property taxes, which this bill affects. He said he felt that this is not really a disclosure bill, but rather a bill to allow Montana more participation in the property tax area in multi-state audits.

Mike Strand, Executive Vice-President and General Counsel, Montana Independent Telecommunications Systems, said he represents rural telephone cooperatives and independent rural telephone companies. He said it's essential that companies have access to information which this legislation would make confidential in order to ensure that companies are being valued fairly and treated equitably. **Mr. Strand** said that his concern with this litigation is that if access to this type of information is unavailable, there would be no way to know whether a company is being valued fairly and treated fairly.

Questions from Committee Members and Responses:

SEN. DEVLIN asked **Mr. Hoffman, Department of Revenue**, what would happen if this bill were to fail. **Mr. Hoffman** told the Committee that Montana is already by statute a member of the Multi-State Tax Commission, and that the purpose of this litigation is to try to achieve some sort of uniformity in terms of how things are looked at, and to try and determine whether or not the information that is being supplied to states is consistent from one state to the next. Some companies have refused audits because they were unsure whether information provided would be protected in Montana, that it would be treated like other property tax information, and some companies believed that some of that information was proprietary. **Mr. Hoffman** said that the Department was merely trying to protect information received through an audit from having the full disclosure that otherwise covers property tax information.

SEN. DEVLIN then asked **Mr. Hoffman** what other states are involved in the Multi-State Tax Commission, and he stated that there are six states wanting to participate in the property tax portion.

SEN. DEVLIN then asked if these other states were giving up any confidentiality, and **Mr. Hoffman** said he believes most of the states already have confidentiality provisions. Montana has not had confidentiality pertaining to property taxes, and that's the purpose of this litigation.

SEN. BOHLINGER referred to **Mr. Strand's** comments and asked **Mr. Hoffman** whether this could cause an imbalance to occur because companies would no longer have this information available to them for comparison. **Mr. Hoffman** said that the bill, even as amended, would bar those kind of comparisons, because it's underlying data would be proprietary. The values themselves become part of the public record. **Mr. Hoffman** reiterated that there could be certain information that would be considered confidential by a company and that information would be protected by the Department.

SEN. ELLIS asked **Mr. Woodgerd** about the concerns regarding a definition of "proprietary" and how that is determined, and he responded that companies have said that they don't want sensitive information revealed, particularly to their competitors. It is the Department's desire that the business being audited cannot be harmed by the information gained through an audit. There are situations which define proprietary information differently, and it should be considered on a case-by-case basis.

SEN. ELLIS then requested **Mr. Burr** to respond to that comment. **Mr. Burr** replied that Montana is more open than most states in regard to property tax information. Because of that, other states are reluctant to provide information to Montana because Montana may be required to reveal that information, and that causes a problem with multi-state auditing.

SEN. ECK said that "proprietary" had been defined by a court decision, and she asked **Mr. Woodgerd** if that was a specific definition or more broad. **Mr. Woodgerd** replied that that definition came out of a district court case which could be appealed, and was specific to that case. He said that proprietary information is information that can be harmful if competitors have access to that information. In regard to **SB 105**, proprietary could be defined in broad terms, but the Department wants to avoid getting anything in the statute that is too specific.

SEN. ECK then asked if there were cases where it is not beneficial for Montana to participate in multi-state tax audits. **Mr. Woodgerd** said that Montana has participated in multi-state audits in the corporation license tax area for years, and it has been beneficial not only to the state but also the companies

because they only have one set of auditors, rather than each state auditing individually. That information then serves as the basis for an assessment for all the states participating. The Department feels that treating property tax this way is also beneficial. **Mr. Hoffman** added that Montana will be doing audits of centrally assessed companies irrespective of whether or not Montana participates with the Multi-State Tax Commission. **Mr. Burr** then responded that the corporation license tax area is less objectionable than the property tax area. He said property taxes are specific to each state and are probably better handled by each state than through the Multi-State Tax Commission.

SEN. STANG then asked, if this bill does in fact provide confidentiality that is presently not provided when audits are done, why the Montana Taxpayers Association would not want confidentiality in their tax returns. **Mr. Burr** indicated that the Taxpayers feel that the reasoning behind the confidentiality is participation in multi-state tax audits on property taxes, and that's what is objected to, not the lack of confidentiality. **SEN. STANG** again reiterated that this bill, if passed, would provide confidentiality for property tax audits that are done solely by the Department. **Mr. Burr** agreed that it would provide confidentiality on centrally assessed property tax audits performed by the Department of Revenue, but again, he feels that that the underlying purpose of the bill is to allow Montana to participate in multi-state tax audits.

SEN. STANG asked what would prevent the Department of Revenue from comparing information they gather in their audits with information from other states, and **Mr. Burr** said that there is nothing preventing that in the proposed legislation, and there is nothing preventing that now. **SEN. STANG** suggested that the bill be amended to say it can't be used for multi-state tax audits.

SEN. ELLINGSON asked in regard to the concern about unavailability of information for comparison purposes to determine that all centrally assessed entities are treated equally, whether the bill allows that a summary page of the appraisal report will not be confidential. **Mr. Hoffman** agreed that that was correct. **SEN. ELLINGSON** then asked if a value that is assessed to this unit of property would be included in that summary and whether that would provide enough information for a company to use as a comparison. **Mr. Hoffman** said he believes it would.

SEN. ELLINGSON then asked **Mr. Strand** what additional information he thought would be needed other than what would be on the summary page in order to obtain the information to address his concern. **Mr. Strand** explained that the Department uses three

different approaches for determining taxes, and those approaches can be mixed and matched. If the underlying costs of the companies are not available for comparison, there is no way to know what factors were used to make their decisions. His concern is that there will not be sufficient information in a summary to make those comparisons. **SEN. ELLINGSON** asked **Mr. Strand** if that would be available through a court or administrative challenge to the tax bill, and **Mr. Strand** said that a court order would be needed to allow a company to look at information of another company.

SEN. DEPRATU asked **Mr. Burr** what it would take to make this bill palatable, if the amendment referring to multi-state audits would be enough. **Mr. Burr** said an amendment preventing participation in multi-state audits on property tax is more a concern than confidentiality of the information, but it may not be enough for others who are more concerned with confidentiality.

SEN. ECK asked whether real estate transfer taxes had confidentiality, and **Mr. Woodgerd** answered that there is a specific statute that makes realty transfer certificates confidential.

SEN. ELLIS referred to the concerns expressed about the way utilities are assessed. He asked **Mr. Hoffman** how these companies are assessed and what information is needed to do that. **Mr. Hoffman** answered that all utilities that operate on a multi-state basis, because the property is valued as a unit irrespective of the state that it is located in, are assessed by a methodology which allocates a portion of that value to Montana. Railroad and airlines are a perfect example of that. He said the purpose of these audits is to ensure some sort of consistent application and assurance that that is being done properly and that the Department is provided that information.

SEN. ELLIS asked whether providing this confidentiality makes other states more willing to share information with Montana. He asked whether they can be forced to do that in any case. **Mr. Hoffman** replied that the Department had received information from companies rather than other states regarding a concern with the State of Montana because certain proprietary and confidential information cannot be protected by Montana.

Closing by Sponsor:

SEN. EKEGREN had no closing statement.

NOTE: CHAIRMAN DEVLIN RESUMED THE CHAIR. He encouraged the proponents and opponents to **SB 105** to propose some suitable amendments that would make this bill more palatable.

EXECUTIVE ACTION ON SB 84

Motion/Vote: SEN. STANG MOVED THAT SB 84 DO PASS. MOTION CARRIED 9-0.

EXECUTIVE ACTION ON SB 25

Motion: SEN. ECK MOVED DO NOT PASS ON SB 25.

Discussion:

SEN. GLASER said that the way the bill is worded, **SEN. TOEWS** is proposing that counties and other political subdivisions cannot advertise delinquency on the first year's taxes. It says "less than 2 years," which would mean there is one year's taxes that are delinquent. **Mr. Heiman** said that he reads it as being delinquent one year and then also the next year being due, so that would be two calendar years after the tax bill is sent out.

SEN. EKEGREN asked **SEN. ECK** what her objection would be to publishing the names after two years' delinquency. **SEN. ECK** said her objection is not in the publication of delinquencies, but just generally putting strings on what a county can do and cannot do. If the actions of the county commissioners are unacceptable, then they probably won't be reelected. She said she didn't think that the legislature should tie the hands of the county commissioners if the county felt that this would be helpful in collecting taxes.

SEN. STANG said he also had made note of local control versus state. He said he agreed with **SEN. ECK**, that it should have been taken to the county commissioners and if enough people do that, they can make a resolution saying that the delinquencies are not to be published for two years. If the counties are going to levy the taxes, they should be in charge of how they're collected.

SEN. ELLIS also felt that it's an issue that should be dealt with on the local level.

SEN. GLASER said that if everyone trusted their local government, there wouldn't be a need for a local government committee in the legislature, and this is the type of thing they tend to deal with. In addition, with **CI-75**, if people don't pay their property taxes, it really disrupts the cash flow to the county over the next several years.

Motion/Vote: SEN. DEPRATU MOVED THAT SB 25 BE TABLED. MOTION
CARRIED 7-2 WITH GLASER AND STANG VOTING NO.

ADJOURNMENT

Adjournment: 9:08 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas08aad)